

**Letter of Findings Number: 01-20130599
Individual Income Tax
For Tax Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUES

I. Adjusted Gross Income Tax – Liability.

Authority: IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayers protest the assessment of individual income tax.

II. Tax Administration – Penalties and Interest.

Authority: IC § 6-8.1-10-2.1; IC § 6-8.1-10-1; [45 IAC 15-11-2](#).

Taxpayers protest the imposition of penalties and interest.

STATEMENT OF FACTS

Taxpayers are individuals. The Indiana Department of Revenue ("Department") determined that Taxpayers filed their 2011 Indiana individual income tax return late and had not paid individual income tax due. The Department issued proposed assessments for base tax, penalties, and interest. Taxpayers protest the assessment of base tax and the imposition of the penalties and interest. Taxpayers were informed of their right to have an administrative hearing. However, Taxpayers requested that the Department make a decision based on the information contained in the file without holding an administrative hearing. Taxpayers provided written materials in addition to those provided with their protest letter. Pursuant to Taxpayers' request, no administrative hearing was held, and the following Letter of Findings, which is based on the information contained in the file, results. Further facts will be supplied as required.

I. Adjusted Gross Income Tax – Liability.

DISCUSSION

The Department issued proposed assessments for base tax, penalties, and interest. Taxpayers protest the assessment of base tax.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that an assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). In this case, Taxpayers have not provided any explanation, evidence or documentation which supports its assertion that the Department's proposed assessment of base tax is incorrect. Taxpayers have not met their burden, and their protest is respectfully denied.

FINDING

Taxpayers' protest is respectfully denied.

II. Tax Administration – Penalties and Interest.

DISCUSSION

The Department issued proposed assessments for base tax, penalties, and interest. Taxpayers protest the assessments of penalties and interest.

A taxpayer who "fails to file a return . . ." or "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment . . ." is subject to a penalty." IC § 6-8.1-10-2.1(a). The Department shall waive the penalty if the taxpayer demonstrates that the failure to pay the outstanding taxes "was due to reasonable cause and not due to willful neglect." IC § 6-8.1-10-2.1(d); see also [45 IAC 15-11-2](#). The taxpayer may demonstrate reasonable cause by showing affirmatively that it used "ordinary business care and prudence" in not filing a return on time or paying the outstanding taxes. Whether a taxpayer demonstrates reasonable cause for penalty purposes is a fact-sensitive question and determined on a case-by-case basis. [45 IAC 15-11-2](#)(b) and (c).

In this case, Taxpayers provided a letter to the Taxpayers from the Internal Revenue Service indicating that no changes would be made to the Taxpayers' federal tax return. Taxpayers indicate in correspondence to the Department that they have "shown reasonable cause and [were] not willful and neglectful based upon the recent audit by the Internal Revenue Service . . ." However, Taxpayers do not explain how this correspondence demonstrates they used "ordinary business care and prudence" in not filing the required return on time or paying the outstanding taxes. Additionally, they do not explain how a recent audit of their federal tax return is a reasonable cause to fail to file their Indiana individual income tax return by its due date or pay Indiana individual income taxes. Consequently the penalties imposed are not waived, and Taxpayers' protest of the penalties is respectfully denied.

Finally, "If a person fails to file a return for any of the listed taxes [or] fails to pay the full amount of tax shown

on the person's return by the due date for the return or the payment . . . the person is subject to interest on the nonpayment." IC § 6-8.1-10-1(a). The Department may not waive the interest imposed except in specific circumstances that do not apply in this case. IC § 6-8.1-10-1(e). The interest is not waived, and Taxpayers' protest of the interest is respectfully denied.

FINDING

Taxpayers' protest of the penalties and interest is denied.

SUMMARY

Taxpayers' protest is denied on Issue I regarding assessment of adjusted gross income tax. Taxpayers' protest is denied on Issue II regarding imposition of penalties and interest.

Posted: 04/30/2014 by Legislative Services Agency

An [html](#) version of this document.